

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date: **September 15, 2006**

Time: 8:00am

Place: **Room 1112, State Office Bldg**

### Members

(Attendees = x)

#### Commission Members

xChairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*

xDavid M. Lattin, *Salt Lake*

xGlen W. Roberts, *Utah* R. Curt Webb, *Cache*

#### Department Staff

xJohn E. "Mickey" Braun, Jr.

xPerri Babalis

Darrel Powell

xMark Kleinfield

*Ass't Commissioner*

*AG Legal Counsel*

*Dir. Market Conduct*

*Admin. Law Judge*

xGerri Jones

xSheila Curtis

Brad Tibbitts

xJilene Whitby

*MC Examiner*

*MC Examiner*

*Dir. Life & P&C*

*PIO/Recorder*

## MINUTES

### I. Welcome and Introductions by Darwin L. Johnson, Chair

Darwin began the meeting at 8:17a.m.

### II. Adoption of Minutes of Previous Meeting

Joyce made a motion to accept the minutes. David seconded the motion and the vote was unanimous in its favor.

### III. Review & Concur with Licensee Report

Mickey noted that the department was working on the second run of the July and August reports. We are still working out the bugs in the program. When the reports were provided during the meeting it appeared that there were still problems with its accuracy. Gerri suggested deferring the review of these reports until they were run again and checked for accuracy. All agreed.

### IV. Review & Concur with Enforcement Case Report / Mark Kleinfield

Mark apologized for not having a synopsis of the cases he had to present to the Commission and promised to have it, along with a place to sign-off on at the next meeting.

- **First Choice Title Insurance Agency:** Failed to file their 2006 annual report. On July 11 an informal proceeding was held. A \$1,000 fee was assessed. The defendant did not request a formal hearing. The defendant failed to pay the fine and file the report. Mr. Lemmon filed the Order to Show Cause why they should not revoke their license. A hearing was set but the agency did not appear. On September 12 the department ordered the agency to cease doing business. The department recommended the revocation of their license and an additional fee be assessed. Mark noted that from this point on orders would not go out without the Commission's approval. Joyce made a motion to approve the penalties as stipulated and David seconded the motion. The vote was unanimous in its favor. Darwin then signed the Order. Perri recommended the order also include a place for the commissioner to sign. David asked what leverage the department has in collecting a fine once the license is revoked? None. It is turned over to the state's collection agency or written off.
- **Absolute Title Insurance Agency:** Failed to file their 2005 annual report. On July 11 2006 an informal proceeding was initiated. A hearing was requested and held August 16. Their attorney argued that before the agency could do business they had to file their rates and since they had not filed them they could not do business. Mark noted that the agency was licensed and as a result was required to file their annual report. Mark recommended a \$500

fine instead of the usual \$1,000 due to the merits of the argument and the educational effect of the fine. The agency would be ordered to file the report within 15 days of the imposition of the penalty. David asked if the fine established a precedent? Mark said it did not since it had been done before. Glen asked when they had been licensed and was told November 2005. He then made the motion to adjust the penalty to \$1,000. Joyce seconded the motion and the vote was unanimous in its favor. Mickey stated that on behalf of the Commissioner he concurred with the Commission's motion.

- **Mickey & Perri review procedures and requirements of law**

- Mickey noted concern with two attorneys giving the Commission counsel. Perri is their counsel. If there is a difference of opinion between the Commission and the department Gale would then be the department's general counsel.
- As the department's prosecutor, Gale violates attorney ethics by presenting cases to the Commission without the defendant present. To resolve this issue, Mark Kleinfeld, the department's administrative law judge (ALJ), will act as a neutral party and present cases to the Commission.
- Also, Mickey and Perri reviewed the Commission and department's legal responsibilities and found they were out of compliance. A handout was provided. Some of the rules do not conform with the requirements of the law. Mickey is working on revisions to:
  - Rule R592-2, Title Insurance Administrative Hearings and Penalty Imposition. A draft of this rule with proposed changes was given to the Commission for their review and input. Perri said that the law requires the Commission to impose the penalty and the commissioner can then concur. If the Commission wants to delegate the imposing of the penalty to the department then the code will have to be changed.
    - Glen said that their intent was not to act as judge and attend hearings. Perri said that they had the power to determine which cases go to the ALJ. The department brings the recommended penalty to them and they impose it. If the Commission is not happy with the penalty they can change it. If the defendant opts for a hearing the Commission can hear it or delegate it. Mark will be your hearing officer or ALJ. You would hear it and he would draft conclusions of law that you could agree to or change. If you do not hear the case, Mark will give you his recommendations. The Commission and commissioner have to come to concurrence on the penalty.
    - Perri noted an additional change. When there is a final order, it will not be sent out until the Commission has seen and approved it. A teleconference can be set up to get the Commission's approval and direction. Joyce asked if they could also call a special meeting? Mickey said yes. Jack asked if the defendant could choose the Commission or ALJ to hear their case? Mark said they could make a motion but it would be up to the Commission. Mickey suggested the Commission review these changes, then discuss at the next meeting.
  - Mickey noted that as part of the budget process each year he sends changes to the department's fees to the legislature. The process begins in September. A hearing is held in December to get input from the industry then changes may be made before they are presented to the legislature. Between June and August the department's fee rule is revised and published. The rule tells people when the fees are due. A handout was provided. The only title fee that is unique from all other fees is the "escrow charge filing fee." Mickey recommended that for this year the Commission approve the department's fee changes so they can continue with the budget process. The Commission can change the fees if they desire. Glen moved to adopt the 2007 to 2008 schedule of fees as presented by Mickey. David asked why the agency renewal license fee and the reinstatement fee were the same? Mickey explained that both fees activate an inactive license. A license inactivates by law if it is not renewed by the renewal date. The department allows thirty days before the license inactivates in the

Department's database. 30 days after the renewal date, the license lapses (becomes inactive in the database) and must then be reinstated. During the 30 days after renewal, a licensee has only to pay a late renewal fee to maintain the license in an active status. Since the late fee and the reinstatement fee allow the license to be activated, the fee is the same. Once your license has been lapsed for a year, the inactive licensee has to take the licensing exam and apply as if they had never been licensed. It is a significant penalty in time and expense. Joyce seconded the motion and the vote was unanimous in its favor.

- Mickey said he was working on a process by which the Commission determines the annual assessment. A copy of the 2007 assessment and letter regarding the 2008 budget were given to the Commission. The 2007 assessment is ready to go. Gerri's salary and expenses are paid out of the assessment. The Department take what is left over from the previous year, adds what is needed for the coming year to cover expenses, and subtracts the revenue estimate for the coming year to determine the assessment. The amount is given to the IT Division who then sends it through a program that determines the amount assessed to each agency. Mickey recommended they approve the assessment algorithm and the assessment amounts in the 2007 and 2008 budgets. Darwin asked if this included the \$5,000 the Commission received? Mickey referred him to the second page, which included it. David made the motion to accept the assessment as presented. Joyce seconded it and the vote was unanimous.
  - Darwin asked that a discussion of the Commission's duties and rules be put on next month's agenda.
  - Mickey proposed a more formal room plan for Commission meetings. It will be easier to see who are members of the Commission and who are department staff. A table at the front of the room will seat Commission members and Perri. A side table will seat staff. Visitors will sit opposite the Commission. Commission agreed to try it at the next meeting.
- **NAIC Working Groups:** Mickey noted that the NAIC had a couple of working groups dealing with title issues. One is discussing enforcement actions taking place around the country. Mickey reported that the California commissioner will be issuing a rule requiring a rate rollback to 2000 rates.
  - **Simplified letter of Acknowledgment / Sheila**  
Sheila provided the Commission with a copy of the letter of acknowledgment the Real Estate Division sends to those who notify them of violations in the industry. She will mail them a copy of the department's letter. Glen suggested Commission members give suggested changes to the department's letter by email. This should not be put on the next agenda.

#### V. **Old Business**

- **Number of Cases Open / Mickey**  
As of August 31, 2006, 112 investigations were opened, 115 were closed and 144 were in progress. Some are a carry-over from the previous year. At this time the department had 143 enforcement cases that were opened and 95 were closed. In the near future the department will provide the time it takes to resolve cases. This information will be put on the web.
- **Escrow Filing Rules R592-5 Update / Mickey**  
This is in the rulemaking process. The hearing will be held October 11 at 11 a.m. in Room 4112. It was suggested that the auditorium be reserved for the hearing.
- **Update on Copies of Market Conduct Handbook for Commission / Mickey**  
A copy of the handbook on CD was given to each Commission member.

#### VI. **New Business**

- **Flips**
  - **Dee Johnson, Investigator With The Real Estate Division, Speak To The Issue.**

- The Real Estate Division regulates three professions; realtors, appraisers and mortgage brokers. They have 400-500 cases opened at any one time. One hundred are open and 100 closed per month.
- Gerri demonstrated a legal and illegal flip via a power point presentation.
- Dee noted that in one of their open cases, a reverse mortgage was the method used with an unrecorded trustee. They have since switched to a notice of interest.
- A number of homes from a Parade of Homes were sold for \$600,000, and then resold at \$750,000. They were then repurchased as owner occupied for less than the refinanced amount. A woman did this within a six-month period. Two of the sales violated the Good Funds Law.
- Another sale that started at \$1.1 million finally closed at \$7 million last week, after about eight months. The property is valued under \$2 million. They are finding the same investors in each of the investment groups involved. A reverse mortgage was not used. A default will probably occur soon. Lender won't complain until then.
- The Real Estate Division only has jurisdiction over its licensees. They don't have authority to arrest. Many of these investment groups move from state to state. They are in the form of joint ventures and LLCs.
- Dee provided a handout of state approved forms, which does not include the UAR forms for simultaneous transactions. The state does not address occupancy agreements.
- There is nothing wrong with a person putting an offer on property then selling it for a profit. If the property is sold without a title then it is illegal. It is also illegal if used by unlicensed people, air loans, phony property addresses or addresses of vacant lots. Adjusters are being fed information or they make it up themselves. This is easy to do in outlying areas. There are about 40 transactions taking place in St George and some in Park City and about 80 in Utah County.
- Builders are being asked to build subdivisions on spec with a guaranty that properties will be purchased before they are built. A person buys them in the name of a group then moves them to another group. The Division is having a hard time gathering proof. Glen asked what kind of proof Dee needed? Dee said they need the entire packet. They would like to show someone taking a commission or facilitating a fee then a Cease and Desist could be issued and the case could be referred to the AG's office. Dee suggested Commission members call the county attorney if they see deals such as these. Gerri said they could be referred to the Insurance Fraud Division after the department investigates it. Get a copy of the REPC.
- Paul Newton said he had turned a similar deal over to Doug six to eight months ago and this month action was taken. Jack wondered if other title companies could be warned? Mickey said the department could not without the possibility of someone bringing action against them. Underwriters have a contractual right to share this kind of information.
- Jack noted that unlicensed individuals are using a power of attorney that allows them to receive compensation when they deal with investors and banks. Dee said licensees involved in illegal flips consider the fine a cost of doing business. The third violation results in the revocation of their license.
- Gerri provided a copy of a letter from her to Chris Kyler dated April 5, 2001. It gives the department's position on good funds. Basically – it is the title agency's responsibility to verify with the bank that the funds are collected and cleared.
- Jack asked if the Commission could tell people that the UAR assignment form was unacceptable? Glen said that the Commission should take affirmative steps to limit the ability to commit fraud. Paul said the law is not clear that the 3<sup>rd</sup> party can't give money to the first party. Gerri will see if she can find a law in another state that can be adapted for Utah. Glen asked if the statute could be clarified by rule regarding

good funds. Perri said it could. Paul said that we may need to put a criminal sanction with it.

- 10:35 a.m. - Took break.
- 10:55 p.m. - Break ended.
- Darwin asked if a bulletin could be sent out to tell them that the department does not acknowledge the UAR assignment form? Mickey said that the Commission needed to give a finding that these forms should not be used. From the finding we can send out a bulletin advising that the form is not acceptable then write a rule with the weight of law behind it. Paul and Glen will review a draft of the bulletin after the department drafts it. Joyce moved that the bulletin be drafted. Glen seconded the motion, which received a unanimous vote. Jack suggested the bulletin be sent to the real estate industry, UAR and Chris Kyler.
- Glen will talk to ULTA about sending a letter out warning their members to be careful with assignment forms.

**VII. Other Business from Committee Members**

- Paul noted that the Commission had not looked at a Notice of Lease. People are borrowing money and calling it a refinance.
- **ULTA / Glen**
  - ULTA meets regularly with the county recorders. We ought to have the same relationship with the Real Estate Commission and ULTA and meet with them regularly.
  - Glen will call a few people at the Real Estate Division about this. Joyce agreed.
- **Change of meeting time / Darwin**

It was suggested that the meeting time be changed from 8:00a.m. to 8:30a.m. There were six votes in favor of the change and three against. We will try the 8:30a.m. time for awhile.
- **Trustee acting for the developer / Glen**

If a trustee acts for the developer is he acting in the capacity of a fiduciary and would that be considered controlled business or unlawful inducement? Joyce noted that this was going on in St. George. Is that proper activity for a title company? Put it on October's agenda.
- **R592-5 Hearing / Darwin**

It was suggested that the Commission may want to limit time of each comment or the number of comments, such as three pros and three cons. Darwin will get the letter from the Cort Ashdown regarding this rule. All comments should be sent to Jilene. At the end of the comment period she will send copies of all correspondence to Commission members for their review.
- Jack noted that in a class he is teaching, concerns have been raised about title companies hiring a realtor's spouse as a marketing rep and paying her for leads they receive from the realtor. Staff said this would be considered unfair inducement. Gerri asked for names.

**VIII. Reminder:** Next Liaison Meeting is October 3, 2p.m., at Township Title.

**IX. Adjourned** - Glen moved to adjourn at 11:30 a.m. Joyce seconded the motion.

**X. Next Meeting** - October 11, 2006 at 8:30 a.m., Room 4112. The hearing on R592-5 will begin at 11 a.m. in the same room.

***Next Meetings***

*8:00 a.m.*

October 11, 2006  
December 13, 2006

November 8, 2006